

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE OF THE STATE OF MONTANA,	)	
	)	
Appellant,	)	DOCKET NO.: PT-2003-7
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
JIMMY McCABE,	)	FOR JUDICIAL REVIEW
	)	
Respondent	)	

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The above-entitled appeal was heard on April 15, 2004, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR), represented by Appraiser Randall Kaiser, and assisted by Area Manager Kory Hofland, presented testimony in opposition to the appeal. Taxpayer, Jimmy McCabe, represented himself.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer and the Department of Revenue, and exhibits from the Department of Revenue were received.

The Board modifies the decision of the Lewis and Clark County Tax Appeal Board and establishes the value of \$34,900 for the property.

**FACTUAL BACKGROUND**

1. Due, proper, and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is described as follows:  
  
Lot 12, Canyon Ferry Crossing, Phase I, Lewis and Clark County, State of Montana. Geo-code# 05-1890-02-4-10-15.
3. Taxpayer purchased the property in October of 2002 for \$23,000.
4. For tax year 2003, the Department of Revenue appraised the subject land at a value of \$71,525.
5. On July 15, 2003, Taxpayer completed an AB-26 form with the DOR, asking that the subject property be reviewed. The property was reviewed by DOR and the appraised value was reduced to \$46,491 due to the lack of view amenities when compared with other sites in the subdivision and to the presence of a fuel tank easement.

6. The taxpayer filed an appeal with the Lewis and Clark County Tax Appeal Board on August 13, 2003, requesting a land value of \$23,000 and stating on his appeal form:

I purchased the property in an arms length purchase on 9/30/2002 for \$23,000.

7. The Lewis and Clark County Tax Appeal Board held their hearing on October 7, 2003, and rendered a decision favorable to taxpayer, reducing the value to his purchase price of \$23,000.
8. From that decision the Department of Revenue initiated this appeal stating that the proof adduced at the county hearing did not support the decision rendered by the county board.
9. Taxpayer, who is a realtor and avowedly purchased the subject property to re-sell it, has offered the property on the market at \$39,900; later reduced to \$37,900; and currently the property is on the market at \$34,900.
10. At the hearing, DOR offered to reduce the value of the property to the current asking price of the property on the market, the amount of \$34,900.

### **TAXPAYERS CONTENTIONS**

The taxpayer believes that the market value of the property is that which he purchased the property for in an arm's length transaction, namely \$23,000.

### **DOR CONTENTIONS**

DOR relies primarily on its market study of properties within the area of Lewis and Clark County similar to the subject property. This model, presented as DOR's Exhibit E, examines 37 similar properties and concludes that the projected market value for taxpayer's 2.6 acre lot is \$71,525. DOR concedes that the reduction in value to \$46,491 which occurred due to an AB-26 analysis was proper, and, at the hearing, suggested that the current price at which the taxpayer is offering the property for sale, would be a proper value for assessment purposes.

### **BOARD'S DISCUSSION**

The Board believes that the "compromise" offered by the DOR at hearing is a fair resolution of this matter. While this does not represent the value that taxpayer has requested, it is a large movement in his direction. From an initial assessment of \$71,525, it reduces the assessed

valuation of the parcel in question to \$34,900. This amount is the amount which the taxpayer has offered the property in an open market transaction, and is thus arguably one he believes is fair.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lewis and Clark County by the local Department of Revenue office at the value of \$34,900 for tax year 2003. The decision of the Lewis and Clark County Tax Appeal Board is modified accordingly.

Dated this 5<sup>th</sup> day of May, 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JERE ANN NELSON, Member

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JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 5th day of May, 2003, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Mr. Jimmy McCabe  
148 Humbolt Circle  
Helena, Montana 59601

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, MT 59620

Ms. Dorothy Thompson  
Property Tax Assessment  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Mr. Randall Kaiser  
Appraiser  
Lewis and Clark Courthouse  
P.O. Box 1722  
Helena, MT 59601

Mr. Robert Cummins  
Chairperson  
Lewis and Clark County Tax Appeal Board  
One North Last Chance Gulch  
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DONNA EUBANK  
Paralegal

